

APPEAL NO. 032166
FILED OCTOBER 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 28, 2003. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant (claimant) sustained a compensable occupational disease with a date of injury of _____; that the appellant/cross-respondent (self-insured) is not relieved of liability under Section 409.002 because the claimant timely notified her employer of her injury pursuant to Section 409.001; and that the claimant had disability from June 6 through November 2, 2002, and from November 18 through December 10, 2002. The self-insured appeals the hearing officer's determinations on all of the disputed issues, contending that the claimant suffers from an ordinary disease of life, that the claimant failed to meet her burden of proof, and that the hearing officer erred in excluding the testimony of Mr. B. The claimant also appeals, contending that the periods of disability found by the hearing officer are incorrect and may result in an overpayment to her. No response from either party was received.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained an occupational disease as defined by Section 401.011(34), that she timely notified her employer of her claimed injury pursuant to Section 409.001(a), and that she had disability as defined by Section 401.011(16). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's determination that the claimant sustained a compensable injury in the form of an occupational disease is supported by the claimant's testimony and by the opinions of the treating doctor and the referral doctor. See Texas Workers' Compensation Commission Appeal No. 962231, decided December 20, 1996. The hearing officer's determination regarding timely notice of injury is supported by the claimant's testimony. The hearing officer's determination regarding disability is supported by the claimant's testimony and by the medical reports.

The hearing officer did not err in excluding Mr. B's testimony because the identity of that witness was not exchanged with the claimant as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(1)(D) (Rule 142.13(c)(1)(D)).

The claimant appears to contend on appeal that the beginning date of disability should be April 3, 2002. There was conflicting and somewhat confusing evidence regarding the beginning date of disability. The hearing officer noted that a May 13, 2002, chart note from the treating doctor indicated that the claimant was working as of that date. The hearing officer resolved the conflicts in the evidence by determining that

the beginning date of disability was June 6, 2002. The claimant also appears to assert that the hearing officer's decision may result in an overpayment of income benefits because she was working part-time from August 25 through November 2, 2002, which time period is included in the periods of disability found by the hearing officer. The hearing officer noted in the decision that the claimant testified that she was working part-time from August 25 through November 2, 2002, and that that was confirmed by records in evidence. Since Section 401.011(16) defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage," the claimant would have disability when working less than her regular work hours resulting in reduced wages due to the compensable injury. However, in calculating the amount of temporary income benefits, the weekly earnings after the injury are considered under Section 408.103 and Rules 129.2, 129.3, and 129.4. Thus, we perceive no error in the disability determination because the self-insured will be able to adjust the amount of temporary income benefits paid to the claimant taking into consideration her weekly earnings after the injury. Rule 129.4.

We conclude that the hearing officer's determinations on the disputed issues of whether the claimant sustained a compensable injury in the form of an occupational disease, whether the claimant timely notified her employer of the injury, and whether the claimant had disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge